IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1476 of 2004
with
LETTERS PATENT APPEAL No 1364 of 2004
AND
CIVIL APPLICATION No 5828 of 2004
with
CIVIL APPLICATION No 5040 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 & 2 YES; 3 to 5 NO

OIL AND NATURAL GAS CORPORATION LTD

Versus

UNION OF INDIA

Appearance:

1. LETTERS PATENT APPEAL No. 1476 of 2004
MR KAMAL B TRIVEDI ADDL AG for Appellant
..... for Respondent No. 1,3
MR MUKUL SINHA for Respondent No. 2

2. LETTERS PATENT APPEAL No. 1364 of 2004
MR BB NAIK FOR Appellant
MR MUKUL SINHA for Respondent No.1

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 02/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. Both these appeals, invoking Clause 15 of the Letters Patent, arise from the judgments dated 1.3.2004 and 22.3.2004 of the learned Single Judge and those judgments, in turn, were rendered in the petitions which challenged the same interlocutory order dated 13.11.2003 in the Reference (ITC) No.12 of 2000 pending before the Industrial Tribunal, Ahmedabad. By virtue of that order granting interim relief, in effect, the workmen were protected from termination of their service, while their dispute regarding genuineness of the contract under which the workmen concerned were employed as contract labour was being adjudicated. Thus, both the judgments under challenge have dealt with the same interim order of the Industrial Tribunal under two separate petitions filed by the principal employer and the contractor, the appellants herein. In the decision dated 1.3.2004 in Special Civil Application No.2639 of 2004, it is categorically stated as under in para 4 of the judgment:

"4.....Considering the order passed by the Tribunal it cannot be said that the order passed by Tribunal is without jurisdiction or that the discretion exercised by the Tribunal is so perverse which would call for interference by this Court in exercise of its powers under Article 227 of the Constitution of India...."

In the latter judgment dated 22.3.2004 in SCA No.3401 of 2004, it is again categorically stated in the last para as under:

"....In the absence of such details, it cannot be said that the Tribunal has committed any jurisdictional error which would call for interference by this Court in exercise of its powers under Article 227 of the Constitution and hence petition is rejected."

2. During the course of admission hearing of these appeals, the appellants of both the appeals sought time to make an application before the learned single Judge for clarification as to whether the jurisdiction was exercised by the learned Single Judge under Articles 226 and 227 of the Constitution or either of these two Articles. Pursuant to such application having been made and heard, the following order dated 4.10.2004 was passed by the learned Single Judge:

> "Considering the facts and circumstances of the case, the order passed by this Court on 22.3.2004 in SCA no.3401/04 is clear and no further clarification is required. It may be recorded that in the said order this Court has relied upon another decision dated 1.3.2004 rendered in SCA No.2639/04 which also is a case for exercise of power under Article 227 of the Constitution of India. In the circumstances, MCA is rejected."

3. In view of the absolutely clear position about the jurisdiction exercised by the learned Single Judge, preliminary objection regarding maintainability of these appeals was raised on behalf of the respondents, and the learned Additional Advocate General as also the learned counsel Mr.B.B.Naik appearing for the appellants strenuously argued that the original petitions were filed invoking either both the Articles 226 and 227 or exclusively under Article 226 of the Constitution. It was very clear from the averments made in the petitions that the provisions of and powers under Article 226 of the Constitution were invoked by the petitioners according to their submission. It was also pointed out from the prayers made in both the petitions that the appellants had, in terms, sought various writs in the nature of Certiorari, Prohibition and Mandamus and, in such circumstances, there was no justification for considering the petitions under Article 227 of the Constitution. It was, on that basis argued that, despite the clarification as mentioned hereinabove, the appeals ought to be entertained on merits.

4. The learned counsel for the appellants relied upon the judgments of the Supreme Court in UMAJI KESHAO MESHRAM v. RADHIKABAI [AIR 1986 SC 1272] and LOKMAT NEWSPAPERS PVT. LTD. v. SHANKARPRAPSAD [AIR 1999 SC 2423] to submit that the observations in the impugned judgments did not necessarily mean that the learned Single Judge was not inclined to interfere under Article 227 only. Confronted with the later judgment of the Supreme Court in KANHAIYALAL AGRAWAL v. FACTORY MANAGER,

GWALIOR SUGAR CO. LTD. [AIR 2001 SC 3645], the learned counsel submitted that the later judgment relied upon a few lines from the Head Note of the earlier judgment in LOKMAT NEWSPAPERS (supra) and the observations made on that basis have to be examined in proper perspective. It was vehemently argued that the sentences extracted from LAKMAT NEWSPAPERS (supra) are not found in the text of the judgment, but they are quoted from the Head Note of the law reporter. It was also sought to be argued that the judgment in LOKMAT NEWSPAPERS (supra) and the earlier judgment in UMAJI KESHAO (supra) clearly indicate that it would be open for the Division Bench to entertain an appeal when original petition was maintainable under Article 226 and, in fact, when the original petition invoked that Article.

5. The latter judgment in KANHAIYALAL (supra) is required to be referred in the above context, and more particularly paragraphs 5 and 6 of the judgment may be reproduced for the purpose of considering the arguments of the appellant:

> "5. So far as the law on the matter is concerned as to whether an appeal would lie against an order made in writ petition before the High Court challenging an order of the Labour Court, this Court in its decision in Lokmat Newspapers Pvt. Ltd. v. Shankarprasad [(1999) 6 SCC 275] stated that "if a single Judge exercises jurisdiction under Art.226, Letters Patent Appeal would be maintainable, but if the jurisdiction is exercised under Art.227 it will not be maintainable". But with an explanation that if the single Judge of the High Court in considering the petition under Art.226 or Art.227 does not state under which provision he has decided the matter and where the facts justify filing of petition both under Art.226 and Art.227 and a petition so filed is dismissed by the single Judge on merits, the matter may be considered in its proper perspective in an appeal. This Court held as aforesaid in view of the decisions of this Court in Umaji Keshao Meshram v. Radhikabai, 1986 Supp.SCC 401, Ratnagiri District Central Co-operative Bank Ltd. v. Dinkar Kashinath Watve, 1993 Supp (1) SCC 9 and Sushilabai Laxminarayan Mudaliyar v. Nihalchand Waghajibhai Shaha, 1993 Supp (1) SCC 11.
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> 6. Hence, we are of the view that it is

> wholly unnecessary for us to examine this aspect of the matter in view of the declaration of law made by this Court in Lokmat Newspapers Pvt. Ltd. v. Shankarprasad (1999 Lab IC 2826) (supra) after adverting to all the decisions on the point."

6. Obviously, the Apex Court has found it to be wholly unnecessary to examine the aspect of the matter in view of the declaration of law made by the Court in Lokmat Newspapers (supra) and the declaration of law as quoted in para 5 hereinabove is that if the jurisdiction is exercised by the learned single Judge under Article 227, Letters Patent Appeal preferred therefrom will not be maintainable. In view of this clear and categorical declaration of law by the Hon'ble Supreme Court, it would be neither possible nor proper to entertain the argument that the earlier judgments in UMAJI KESHAO (supra) or in LOKMAT NEWSPAPERS (supra) which were expressly referred by the Supreme Court in KANHAIYALAL (supra) purported to declare or pronounce a different proposition of law. Therefore, respectfully following the later judgment of the Supreme Court in KANHAIYALAL (supra), we hold that the decisive factor in consideration of maintainability of Letters Patent Appeal is not the Article under which the petition was filed or the Articles which were invoked by the petitioner, but it is the Article under which the jurisdiction was exercised by the learned Single Judge in deciding the matter. The clear words in the aforesaid judgment stating that "if the jurisdiction is exercised under Article 227" leaves no room for doubt about the proposition that it is the exercise of jurisdiction by the learned Single Judge which is decisive in the matter. If the appeal were to be entertained on the contention that the learned Single Judge ought to have treated the petition as the one invoking Article 226 and could have decided the same only under that Article, it would amount to entertaining the appeal despite the embargo on its maintainability.

7. In the facts of the present appeals, not only that the learned Single Judge has decided the petitions of the appellants expressly in exercise of jurisdiction under Article 227 of the Constitution but it is further clarified by the aforesaid order in an application of the appellants that it was only Article 227 under which the petitions of the appellants were decided. In view of this clear factual position further clarified by the learned Single Judge, the appeals cannot be entertained under Clause 15 of the Letters Patent and have to be dismissed as not maintainable. Since we have followed

the later judgment of the Supreme Court, there is no question of referring the matter to a Larger Bench as suggested by the learned counsel Mr.B.B.Naik. The appeals are, therefore, summarily dismissed with no order as to costs. The Civil Applications do not survive in view of dismissal of the appeals and they accordingly stand rejected.

Sd/-

(A.M.Kapadia,J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)